

by a facility, and the Board, upon review, issues a decision under § 655.1245(h), holding that a violation was committed by a facility.

(b) The Attorney General, upon receipt of the Administrator's notice under paragraph (a) of this section, shall not approve petitions filed with respect to that employer under section 212(m) of the INA (8 U.S.C. 1182(m)) during a period of at least 12 months from the date of receipt of the Administrator's notification.

(c) ETA, upon receipt of the Administrator's notice under paragraph (a) of this section, shall suspend the employer's Attestation(s) under subparts L and M of this part, and shall not accept for filing any Attestation submitted by the employer under subparts L and M of this part, for a period of 12 months from the date of receipt of the Administrator's notification or for a longer period if one is specified by the Attorney General for visa petitions filed by that employer under section 212(m) of the INA.

**§ 655.1260 Can Equal Access to Justice Act attorney fees be awarded?**

A proceeding under subpart L or M of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses under the provisions of the Equal Access to Justice Act.

**PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES**

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AUTHORITY: 8 U.S.C. 1182(a)(5)(A) and 1182(p); 29 U.S.C. 49 *et seq.*; sec.122, Pub. L. 101-649, 109 Stat. 4978.

SOURCE: 45 FR 83933, Dec. 19, 1980, unless otherwise noted.

**Subpart A—Purpose and Scope of Part 656**

**§ 656.1 Purpose and scope of part 656.**

(a) Under section 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain a visa for entrance into the United States in order to engage in

permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(b) The regulations under this part set forth the procedures whereby such immigrant labor certifications may be applied for, and given or denied.

(c) Correspondence and questions concerning the regulations in this part should be addressed to: Division of Foreign Labor Certifications, United States Employment Service, Department of Labor, Washington, DC 20210.

[45 FR 83933, Dec. 19, 1980, as amended at 56 CFR 54927, Oct. 23, 1991]

**§ 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.**

(a)(1) *Description of the Act.* The Immigration and Nationality Act (Act) (8 U.S.C. 1101 *et seq.*) regulates the admission of aliens into the United States. The Act designates the Attorney General and the Secretary of State as the principal administrators of its provisions.

(2) The Immigration and Naturalization Service (INS) performs most of the Attorney General's functions under the Act. See 8 CFR 2.1.

(3) The consular offices of the Department of State throughout the world are generally the initial contact for aliens in foreign countries who wish to come to the United States. These offices determine the type of visa for which an alien may be eligible, obtain visa eligibility documentation, and issue visas.

(b) *Burden of Proof under the Act.* Section 291 of the Act (8 U.S.C. 1361) states in pertinent part, that:

Whenever any person makes application for a visa or any other documentation required for entry, or makes application for

admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act \* \* \*.

(c)(1) *Role of the Department of Labor.* The role of the Department of Labor under the Act derives from section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)), which provides that any alien who seeks admission or status as an immigrant for the purpose of employment under paragraph (2) or (3) of section 203(b) of the Act shall be excluded unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(i) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(ii) The employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) The certification is referred to in this part 656 as a "labor certification".

(3) The Department of Labor issues labor certifications in two instances: For the permanent employment of aliens; and for temporary employment of aliens in the United States classified under 8 U.S.C. 1101(a)(15)(H)(ii) pursuant to regulations of the Immigration and Naturalization Service at 8 CFR 214.2(h)(4) and sections 101(a)(15)(H)(ii), 214, and 218 of the Act. See 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188. The Department also administers attestation and labor condition application programs relating to the admission and/or work authorization of the following nonimmigrants: registered nurses (H-1A visas), professionals (H-1B visas), crewmembers performing longshore work (D visas), and students (F-1 visas), classified under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1101(a)(15)(H)(i)(b), 1101(a)(15)(D), and 1101(a)(15)(F), respectively. See also 8 U.S.C. 1184 (c), (m), and (n), and 1288; and Public Law 101-649 section 221, 8 U.S.C. 1184 note. The regulations under this part 656 apply